



Report to the Auburn City Council

Action Item

9

Agenda Item No.

City Manager's Approval

To: Mayor and City Council
From: Robert Richardson, City Manager
Date: November 25, 2013
Subject: Re-adoption of the Regional Sewer Pipeline Resolution and Funding Agreement

The Issue

Shall the City Council re-adopt the full Resolution and Funding Agreement to participate in the construction of the Regional Sewer Pipeline project?

Conclusion and Recommendation

That the City Council re-adopt the full Resolution and Funding Agreement to participate in the construction of the Regional Sewer Pipeline project.

Background

On November 19, 2013, Placer County awarded the contract for the construction of the regional sewer pipeline. Negotiations for Auburn's participation in that project were conducted up to the afternoon of Friday November 15th, where six elected officials (two from Auburn, two from Lincoln, two from Placer County) negotiated a new tentative agreement. New deal points included the reduction of almost \$700,000 in costs for Auburn, guarantees of flow capacity, and the ability to sell the City's capacity in the future.

Given the County's deadline of the following Tuesday, this meant that the City Council would have to meet in order to consider the new deal, then, if accepted, the Board of Supervisors would have to officially accept the deal as well, leaving the remaining time on Monday for staff to finalize all necessary documents to meet the Tuesday deadline.

For these reasons the City held a special meeting on Saturday the 16th to consider the deal points. During the meeting Council approved and provided specific directions for staff to finalize all required documents; some of which were not available at the time of the meeting. Therefore, given the scheduling constraints and the fact that all documents were not available for public review, staff is bringing the finalized documents back for Council's review and re-adoption to ensure Council has access to all the documents and that they are made available through the City's website for public review.

Fiscal Impact

\$2,390,100 plus construction contingency.

Attachments

Resolution and Funding Agreement

1 RESOLUTION NO. 13-121

2 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
3 APPROVING A FUNDING AGREEMENT RELATING TO THE MID-
4 WESTERN PLACER REGIONAL SEWER PROJECT
5 -----

6 WHEREAS, Placer County, the City of Auburn, and the City of Lincoln
7 wish to work cooperatively to plan, design, permit, finance, construct and
8 operate regional wastewater collection, conveyance and treatment facilities to
9 serve the Greater Auburn Area ("the Project"); and,

10 WHEREAS, Placer County and the City of Lincoln have entered into a
11 Construction, Operations and Joint Exercise of Powers Agreement (COJA) with
12 respect to the Project and the COJA states that the City of Auburn is an
13 intended third-party beneficiary of that agreement; and,

14 WHEREAS, on October 28, 2013 this City Council stated the City's intent
15 to participate in the Project and authorized two City Councilmembers to
16 negotiate with Placer County and the City of Lincoln regarding the Project;
17 and,

18 WHEREAS, those negotiations led County Counsel to draft a Funding
19 Agreement Relating to the Mid-Western Placer Regional Sewer Project
20 attached hereto as Exhibit A ("the Funding Agreement"); and,

21 WHEREAS, the City of Auburn does not understand the five-year term of
22 the Funding Agreement to allow the lapse of its rights to use the Project once
23 it has made the payments required by the Funding Agreement; and,

24 WHEREAS, the City of Auburn understands the Funding Agreement to
25 obligate the City to make the payments referenced in its section 5 and that
26 the fifth sentence of section 7 merely references the obligations of section 5
27 and does not create an additional payment obligation of the City of Auburn;
28 and,

1 WHEREAS, the City of Auburn does not understand the provisions of the
2 Funding Agreement which reference future charges to the City of Auburn by
3 the City of Lincoln and/or Placer County with respect to maintenance, repair
4 and rehabilitation and operation of wastewater treatment and conveyance
5 facilities to constitute its consent to payment of any fee in an amount which
6 exceeds that which the City of Lincoln and/or Placer County have the legal
7 power to impose on their residents, property owners and other sewer
8 customers; and,


9 WHEREAS, further agreements among Placer County, the City of Auburn
10 and the City of Lincoln will be required to allow Auburn to make use of the
11 wastewater capacity in the Project to be reserved for its use under the
12 Funding Agreement; and,

13 WHEREAS, Placer County and the City of Lincoln have assured the City
14 of Auburn that they will pursue those necessary agreements in good faith.

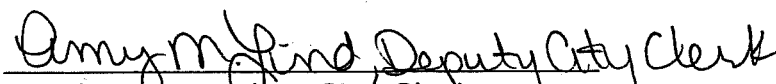
15 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN
16 DOES HEREBY RESOLVE AS FOLLOWS:

- 17 1. The City Manager is hereby authorized and directed to execute the
18 Funding Agreement in substantially the form attached to this
19 resolution as Exhibit A.
20 2. The City Clerk shall certify to the adoption of this resolution.

21 DATED: November 16, 2013

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23 KEVIN HANLEY, Mayor

24 ATTEST:

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26 Stephanie Snyder, City Clerk
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I, Stephanie Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a special meeting of the City Council of the City of Auburn held on the 16th day of November 2013 by the following vote on roll call:

Ayes: Nesbitt, Holmes, Kirby, Powers
Noes: Hanley
Absent:

Amy M. Lind, Deputy City Clerk
Stephanie Snyder, City Clerk

**FUNDING AGREEMENT
RELATING TO THE MID-WESTERN PLACER REGIONAL
SEWER PROJECT**

THIS FUNDING AGREEMENT RELATING TO THE MID-WESTERN PLACER REGIONAL SEWER PROJECT ("Agreement") is made as of the 16 day of Nov, 2013, by and among and the **COUNTY OF PLACER**, a political subdivision of the State of California ("County") and the **CITY OF AUBURN**, a general law city duly organized and existing under the laws of the State of California ("Auburn").

RECITALS

A. WHEREAS, the County, Auburn, and City of Lincoln ("Lincoln") wish to work cooperatively to plan, design, permit, finance, construct and operate regional wastewater collection, conveyance and treatment facilities to serve the Greater Auburn Area; and,

B. WHEREAS, County, Auburn, and Lincoln have determined that a regional wastewater project consisting generally of pumping facilities located at the County's existing Sewer Maintenance District 1 site on Joeger Road in North Auburn ("SMD 1 Site"), a conveyance pipeline connecting to the existing City of Lincoln Wastewater Treatment and Recycling Facility on Fiddymont Road in Lincoln (the "Lincoln WWTRF"), and certain improvements to the Lincoln WWTRF, as more fully described in the "Project Description" dated October 6, 2013 attached as Exhibit A (collectively the "Mid-Western Placer Regional Sewer Project" or "Project"), is in the public interest; and

C. WHEREAS, on March 13, 2012, the Placer County Board of Supervisors gave direction to County staff to move forward with the Project with Lincoln while keeping open the option for Auburn to participate in the Project; and

D. WHEREAS, on October 8, 2013 the County Board of Supervisors approved the Construction, Operations and Joint Exercise of Powers Agreement (COJA) between the County and Lincoln, a copy of which is attached as Exhibit B, to construct the Project; and,

E. WHEREAS, the COJA acknowledges in Section 3.3 that Auburn may desire at some date to participate in the Project; and,

F. WHEREAS, Auburn City Council on October 28, 2013 approved a Resolution stating Auburn's intent to participate in the Project,

subject to further negotiations with the County and Lincoln; and,

G. WHEREAS, the City of Lincoln has solicited bids for the Project, including a bid alternative that would provide for a Junction Structure, Joint Export Sewer, and Energy Dissipation Structure and ancillary facilities that would provide for 5.2 MGD in reserved capacity for Auburn in addition to 14.8 MGD of capacity for the County as defined in the definitions below and more fully described in Exhibit A. (collectively, the "County-Auburn Joint Regional Sewer").

H. WHEREAS, the County has to date paid for certain design and environmental review services associated with the Auburn Export Sewer and the County-Auburn Joint Regional Sewer in the amount of Two Hundred and Three Thousand Dollars (\$203,000.00, the "Auburn DERA Costs"); and,

I. WHEREAS, Auburn City Council on November 16, 2013, approved a Resolution authorizing execution of a Funding Agreement between the County and Auburn to construct the County-Auburn Joint Regional Sewer and repay the County the Auburn DERA Costs; and

J. WHEREAS, the County and Auburn wish to enter into a Funding Agreement whereby Auburn agrees to pay the County Two Million One Hundred Thirty Nine Thousand One Hundred Dollars (\$2,139,100.00) for Lincoln to construct the County-Auburn Joint Regional Sewer, subject to adjustment as provided herein, to repay the County the Auburn DERA Costs; and to pay 23.72% of the cost of COJA Change Orders associated with the County-Auburn Joint Regional Sewer.

K. WHEREAS, the Auburn's share of the costs of the County-Auburn Joint Regional Sewer under this agreement comprise 23.72% of the cost of the Project between the Junction Structure and the Transition Structure.

L. WHEREAS, the County and Auburn agree that this Funding Agreement is intended to address construction of the County-Auburn Joint Regional Sewer and reservation of capacity therein, and does not provide for, or otherwise address, treatment of flows by Lincoln, the County or any other party at Lincoln's WWTRF or elsewhere; and, further, the parties agree to work in good faith towards future agreement(s) regarding treatment, capacity transfer and related issues (the "Future Agreements"); and,

M. WHEREAS, the Parties wish to enter into a voluntary agreement memorializing their understanding and commitments regarding

the matters addressed above

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. **Definitions.** Words and phrases used in this Agreement shall have the following meanings:

Auburn means the City of Auburn, a general law City duly organized and existing under the laws of the State of California.

County-Auburn Joint Regional Sewer means the Junction Structure, Joint Export Sewer, and Energy Dissipation Structure and ancillary facilities that would provide for up to 5.2 MGD in reserved capacity for Auburn more fully described in Exhibit A.

Auburn Export Sewer means the pipeline portion of Project running from the Auburn Wastewater Treatment Plant to the Junction Structure, as identified on the Project Map, attached as Exhibit C.

Average Dry Weather Flow means the average daily wastewater flow into the Project, measured from July 1st through September 30th of each year.

Board of Supervisors means the Placer County Board of Supervisors.

Auburn City Council means the City of Auburn City Council.

Joint Export Sewer means the pipeline portion of Project running from the Pipe Junction to the Transition Structure, more fully described in Exhibit A, and as identified on attached Exhibit C.

County means the County of Placer, a political subdivision of the State of California.

County-Approved Construction Design shall mean the final Project design approved by the County.

Lincoln Wastewater Treatment and Recycling Facility (Lincoln WWTRF) means the regional wastewater treatment plant owned and operated by the City of Lincoln.

MGD means millions of gallons per day.

Junction Structure means the junction point of the SMD 1 Export Sewer and the Auburn Export Sewer, as more fully described in Exhibit A.

Lincoln County Project means regional wastewater project consisting generally of pumping facilities located at the County's existing Sewer Maintenance District 1 site on Joeger Road in North Auburn ("SMD 1 Site"), a force main conveyance pipeline connecting to the existing City of Lincoln WWTRF, and certain improvements to the Lincoln WWTRF, as described in the Section 2 of the COJA and more fully described in Exhibit A.

SRF means the State Water Resources Control Board Clean Water State Revolving Fund financial assistance program.

Energy Dissipation Structure means an Energy Dissipation Structure to facilitate the transition from gravity force main flow to gravity flow located at the end of the Joint Export Sewer located adjacent to State Highway 193, as more fully described in Exhibit A.

2. **Purpose and Intent of Agreement.** The purpose and intent of this Agreement is to address the construction and payment for the County-Auburn Joint Regional Sewer and the reservation of capacity for Auburn in those facilities.

3. **Term and Termination.** This Agreement shall be effective as of the date first above written and shall remain in effect for five (5) years, or until such time as the Parties agree to extend, terminate and/or supersede this Agreement. The Parties agree that this Agreement is intended to address construction and related initial Auburn-County matters regarding construction of the Auburn Facilities and to provide a starting point for preparation of Future Agreement(s).

4. **Design Review.** Auburn agrees and acknowledges that it has reviewed and approved the design for the Project, including the County-Auburn Joint Regional Sewer, contained in the City of Lincoln "Midwestern Placer Regional Sewer - Regional and Reclamation Pipelines." Bid Package, for which bids were opened on August 29, 2013 as more fully described in Exhibit 4 of the COJA.

5. **Payment.** The parties agree as follows:

- a. Auburn shall pay County the Auburn DERA Costs in full within sixty (60) days of the date of this Agreement.
- b. County shall bill Auburn no more often than monthly for construction of the County-Auburn Joint Regional Sewer, including up to Forty Eight Thousand Dollars (\$48,000.00) in Lincoln's costs for Engineering Services during construction, as the County-Auburn Joint Regional Sewer is constructed. Each County invoice shall include a statement from a duly authorized County representative indicating all work completed and invoiced was conducted in accordance with this Agreement and shall include a description of the County-Auburn Joint Regional Sewer work performed, including a description of any change orders. Auburn shall pay such invoices to the County within thirty (30) days of receipt.
- c. Disputed costs shall be addressed in accordance with the dispute resolution procedures contained in Section 12 herein.

6. Change Orders

- a. Auburn shall reimburse the County for Twenty Three and 72/100 per cent (23.72%) of the cost of change orders for County-Auburn Joint Regional Sewer components between the Junction Structure and the Energy Dissipation Structure, inclusive. The parties agree that this Auburn share was derived by comparing the incremental cost of the County-Auburn Joint Regional Sewer compared to the cost of the Project between the Pipe Junction and the Energy Dissipation Structure, inclusive, with the construction of that portion without the Auburn capacity.

7. Capacity and Treatment; Future Agreements

- a. The parties agree that the County-Auburn Joint Regional Sewer intends to reserve 5.2 MGD of capacity for Auburn's future use ("Auburn Future Capacity"). The County agrees to reserve and not use Auburn Future Capacity unless otherwise agreed to in writing by Auburn. Auburn agrees and acknowledges that this Agreement provides no guarantee of treatment at the Lincoln WWTRF and/or conveyance rights beyond the Energy Dissipation Structure. Auburn agrees that access to such conveyance and treatment rights, if any, will be addressed in one or more Future Agreements. Auburn agrees and acknowledges that Auburn's use of the County-Auburn Joint Regional Sewer must be preceded by payment to the County of Auburn's flow-based proportionate-share of the

total capital cost of the County-Auburn Joint Regional Sewer. Auburn further agrees that use of the Auburn Future Capacity will be dependent on Auburn paying such future amounts as may be determined by the parties, and Lincoln as the case may be, for Auburn's share of Project maintenance, repair and rehabilitation costs and other customary costs associated with the operation of wastewater conveyance and treatment facilities.

8. **COJA.** The parties agree and acknowledge that this Agreement does not amend, supersede or otherwise affect the Construction, Operations and Joint Exercise of Powers Agreement between the County and Lincoln dated October 16, 2013 ("COJA"). Auburn acknowledges receipt of the COJA as an exhibit to this Agreement.

9. **County-Auburn Oversight Committee.**

a. The Parties will work together at the technical level through a Project Coordination Team (PCT). The PCT will include one technical staff member from each Party together with Consultants and other staff as required. The PCT will meet periodically as needed to review progress and cooperate in completion of the work described in this Agreement.

10. **General Provisions**

a. **Compliance With Other Agreements; Prompt Payment.** Each party shall comply with all agreements made by the parties in furtherance of the Project, and shall promptly pay or cause to be paid all consultant costs, fees and other expenses due and payable under such agreements or otherwise associated with the Project.

b. **No Encumbrances.** Except for the purposes of public financing, no party shall mortgage or otherwise encumber, pledge or place any charge upon the Project or any part thereof.

c. **Records and Accounts.** Each party shall keep proper books of record and accounts of the finances of the Project, in which complete and correct entries shall be made of all transactions relating to the Project. Said books shall, upon reasonable request, be subject to inspection by the Parties and SRF staff.

d. **Further Assurances.** Each party shall adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the purposes and intent of this Agreement.

e. Amendment. This Agreement may be amended only by the written agreement of the parties.

f. Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of California. Any legal proceeding brought under this Agreement shall be brought in County of Placer, State of California.

11. Notices. Any notices to parties required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

If to County:

County of Placer
Department of Facilities Services
Attention: Mary Dietrich, Director
11476 "C" Avenue
Auburn, CA 95603

With a copy to:
Placer County Counsel
175 Fulweiler Avenue
Auburn, CA 95603

If to Auburn:

With a copy to:

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any party may amend its address for notice by notifying the other parties.

12. Dispute Resolution. Any disagreement between the Parties regarding matters covered by this Agreement shall be first submitted for the County's Director of Facility Services and the City's Director of Public Works for review. In the event the County's Director of Facility Services and the City's Director of Public Works cannot agree on a resolution, the Parties agree to submit the matter to the Auburn City Manager and County Executive Officer for review and consideration. The City Manager and County Executive Officer may elect to resolve the matter if within the scope of their authority or submit the matter to their respective legislative bodies at a regularly scheduled meeting for review and consideration. Referral to the process identified in this Section 12 shall be a pre-condition to any legal proceeding made pursuant to this Agreement on non-engineering

matters. The parties may also elect by mutual agreement to use the dispute resolution provisions of the COJA in lieu of this Paragraph 12.

13. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have each caused their duly authorized officers to execute this Agreement effective as of the date first written above.

COUNTY OF PLACER

BY: _____
Director, Department of Facility Services

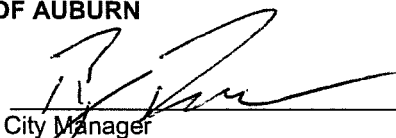
APPROVED AS TO FORM:

BY: _____
County Counsel

ATTEST:

BY: _____
Clerk, Board of Supervisors

CITY OF AUBURN

BY: 
City Manager

ATTEST:

BY: Amy M. Lind
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

Exhibit List:

Exhibit A: Project Description dated October 6, 2013
Exhibit B: Construction, Operations and Joint Exercise of Powers
Agreement between the County and Lincoln dated October 16, 2013
Exhibit C: Project Map